

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 5/22/02 Item 4.d..

File Number
CP01-11-097

Application Type
Conditional Use Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
472-18-002

STAFF REPORT

PROJECT DESCRIPTION

Completed by: John Davidson

Location: East side of S. Third Street, approximately 100 feet north of E. Virginia Street

Gross Acreage: 0.11 Net Acreage: 0.11 Net Density: 38 DU/AC (population-dwelling equivalent)

Existing Zoning: R-M Residence Existing Use: 6-bed residential service facility with 2 live-in staff

Proposed Zoning: No change Proposed Use: 10-bed residential service facility with 2 live-in staff

GENERAL PLAN

Completed by: JED

Land Use/Transportation Diagram Designation
Medium Density Residential (8-16 DU/AC)

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JED

North: Multi-family Residential R-M Residence

East: Multi-family Residential R-M Residence

South: Multi-family Residential R-M Residence

West: Light Industrial LI Light Industrial

ENVIRONMENTAL STATUS

Completed by: JED

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: JED

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☐ Action
☒ Recommendation

OWNER/

APPLICANT

Michael Orlando
15864 Alta Vista Way
San José, CA 95127

Richard Franko
792 S. Third Street
San José, CA 95112

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JED

Department of Public Works, Fire Department

See Conditions of Approval

Other Departments and Agencies

See Conditions of Approval

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND****Project Description**

The applicant is requesting this Conditional Use Permit for a 10-bed residential service facility with two live-in staff members in the R-M Residence Zoning District. The subject facility is a Proposition 36 Sober Living Environment.

The 0.11-acre site is developed with a three-story, 2,450 square foot building constructed in the late 1800's currently used for a residential service facility for six residents and two staff. The ground floor consists of the living room, dining room, kitchen, sitting room, one and a half bathrooms, and a bedroom. The second level features three bedrooms and two bathrooms. There is a small room at the third floor level. Behind the building is a detached accessory structure and yard. Parking will be partially accommodated by this accessory structure and by parking in the existing driveway.

A "Residential Service Facility" is an establishment, other than a residential care facility, where personal services, protection, supervision, assistance, guidance, training, therapy or other non-medical care is provided to residents of the facility. Residential service facilities for more than six residents require a Conditional Use Permit in the R-M Residence Zoning District.

It is the policy of the City of San Jose to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of zoning laws. Drug addicts that are currently sober are considered handicapped under this law. To date, the applicant has not submitted a request for reasonable accommodation under the Fair Housing Act for the proposed facility.

Adjacent Uses

Surrounding land uses include multi-family residential uses to the north, east, and south, and Light Industrial to the west.

GENERAL PLAN CONFORMANCE

Residential care/service facilities are a land use allowed in the Medium Density Residential (8-16 DU/AC) land use designation. General Plan policy specifies that uses of this type should be located in residential designations that allow eight or more dwelling units per acre. The *Population-Dwelling Unit Equivalency* provision of the General Plan Discretionary Alternate Use Policies provides a density range for non-traditional housing that is based on population rather than the number of dwelling units. The population dwelling unit equivalency is calculated by multiplying the General Plan density range by the acreage and the average household size.

Assuming average persons per household of 3.08 persons, this formula allows an on-site population of between 3 and 6 persons. As proposed with 10 residents and two on-site staff, the project exceeds the allowed Population-Dwelling Unit Equivalency. However, the General Plan also deems existing developed parcels (those with an urban land use) of less than two acres in size to be in conformance regardless of their designation.

Under this alternate provision, the parcel, as developed and occupied to the present day, is deemed to conform to the General Plan.

ENVIRONMENTAL REVIEW

The project was found to be exempt from environmental review under Section 15301 of the CEQA Guidelines, which exempts existing facilities for which little or no expansion in use is proposed. The project will not have a significant impact on the environment.

ANALYSIS

The primary issues for this project are project parking, the appropriate number of residents for a house of this size, and compatibility with surrounding uses.

Project Parking

The Zoning Code requires that residential service facilities provide a minimum of one parking space for each four beds and one space for each staff person. Using this standard ratio, with a proposed resident population of 10, and two live-in staff, the proposed project should provide 5 parking spaces. The applicant is proposing to supply two covered parking spaces in the detached accessory building, two open parking spaces in a tandem configuration by using the driveway, and one on-street parking space. In addition to the standard ratio, the Zoning Code allows the Conditional Use Permit authorizing a facility to permit an alternative parking arrangement. This parking arrangement should be considered adequate for this residential service facility. The applicant has indicated that residents will not own cars, and therefore will not create a demand for parking. In addition, the proposed parking arrangement allows a reasonable number of residents on-site without compromising the historic integrity of the existing house by requiring an overly large garage or extensive on-site surface parking. Parking will be used by the on-site staff or incidental visitors to the site. Staff considers the proposed amount and arrangement of parking adequate.

Number of Residents

The applicant originally proposed a residential service facility housing a total of 16 residents and live-in staff. This number of residents could not be accommodated in the existing building, in light of existing requirement of the Fire and Building Codes. According to the Fire and Building Codes, a second floor of a building cannot house more than nine people without having two means of egress. The existing building has only one stairway from the second floor to the ground level, and is therefore limited to nine residents on the second floor. The first floor has one designated sleeping room, which is large enough to accommodate 4 residents, according to

the Housing Code. No sleeping quarters are allowed in the basement or in the third-floor tower room. Therefore, the applicant now requests the appropriate occupancy level for this building, a total of 12 occupants, consisting of 10 residents and 2 staff.

Compatibility with Surrounding Uses

Residential Service Facilities, which include Sober Living Environments, are conditional uses in the R-M Residence Zoning District. Conditional Use Permits allow the Planning Commission to design and impose appropriate conditions to insure that uses will be compatible with their surroundings. The proposed permit for the subject facility includes conditions which will allow the facility to appropriately co-exist with the surrounding neighborhood. The facility will include 24-hour staff coverage. Residents will not be allowed to loiter in the front setback.. Permit conditions also limit visitation hours, outdoor activities, and the use of amplified sound. No major exterior physical changes, apart from routine repair and rehabilitation including fresh exterior paint, are proposed to the site which would change its established design or which might have a deleterious impact on surrounding uses. With the proposed additional operational conditions, neighboring properties should notice an improvement in the management of the facility.

Conclusion

Based on the above analysis, staff concludes that the proposed facility, as conditioned, provides adequate parking, is an appropriate size for the subject building, and is compatible with the surrounding neighborhood.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project.

1. This site has a designation of Medium Density Residential (8-16 DU/AC) on the adopted San Jose 2020 General Plan Land Use/ Transportation Diagram.
2. The project site is located in the R-M Residence Zoning District.
3. The applicant is requesting this Conditional Use Permit to allow a residential service facility providing for up to 10 residents and two on-site staff in the R-M Residence Zoning District
4. The 0.11-acre site, developed with a 3-story, 2,450 square-foot building, is proposed to accommodate 10 residents and two on-site staff.
5. The site is surrounded by multi-family residential uses to the north, east, and south, and light industrial to the west.
6. Residential care/service facilities are a land use allowed in the Medium Density Residential (8-16DU/AC) land use designation. General Plan policy specifies that uses of this type should be located in residential designations that allow eight or more dwelling units per acre. The *Population-Dwelling Unit Equivalency* provision of the General Plan Discretionary Alternate Use Policies provides a density range for non-traditional housing that is based on population rather than the number of dwelling units. The population dwelling unit equivalency is calculated by multiplying the General Plan density range by the acreage and

the average household size. Assuming average persons per household of 3.08 persons, this formula allows an on-site population of between 3 and 6 persons.

7. The applicant is proposing an 10-bed facility, which is in excess of the maximum population allowed on this site under the equivalency formula. However, the General Plan also deems existing developed parcels (those with an urban land use) of less than two acres in size to be in conformance regardless of their designation. Under this alternate provision, the 10-bed facility is deemed to conform to the General Plan.
8. General Plan Policy specifies that residential social service programs should not be concentrated in a few areas, but should be distributed throughout the City. The East Gardner neighborhood has a number of residential service facilities.
9. According to City records, the nearest legal, permitted residential care or service facility is located at least 300 feet away from the project. Therefore, approval of the proposed Conditional Use Permit would not result in an over-concentration within the project vicinity.
10. The Zoning Code requires that residential service facilities provide a minimum of one parking space for each four beds and one space for each staff person. Using this standard, the project as proposed requires 5 parking spaces. However, the Zoning Code also allows the Conditional Use Permit authorizing a facility to reduce the required amount of parking consistent with specific individual circumstances. This use provides a total of five parking spaces--two covered parking spaces, two driveway spaces in a tandem configuration and one on-street space.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

- a. The proposed project will be consistent with the adopted San Jose 2020 General Plan Land Use/Transportation Diagram of the City of San Jose.
- b. The proposed project complies with all applicable provisions of the Zoning Ordinance.
- c. The proposed project is in compliance with the California Environmental Quality Act.
- d. The proposed use is compatible with the surrounding neighborhood.

Finally, based upon the above stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons residing or working in the surrounding area; or
 - c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - c. By highway or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate and; and
 - d. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-15614) to the satisfaction of the Director of Public Works:
 - a. *Fees.* In accordance with City Ordinance, all storm sewer area fees, sanitary connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to recordation of the Conditional Use Permit.
 - b. *Street Improvements.* Remove and replace broken or uplifted sidewalk along project frontage prior to recordation of the Conditional Use Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "LifeChoice Treatment Services" dated November 15, 2001 on file with the Department Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Drug and Alcohol Referral Program.** The applicant/operator shall obtain certification from the County of Santa Clara for an Adult Residential Drug and Alcohol Facility.
5. **Records Maintenance.** Records of the facility shall be maintained and made available for City staff as needed.
6. **Residential Occupancy Permit.** The applicant shall obtain a Residential Occupancy Permit from the Code Enforcement Division. No Occupancy Permit shall be issued until all required improvements are complete and until the project has been certified in compliance with all applicable building and fire codes.
7. **Occupancy.** This Conditional Use Permit authorizes the use of the main building for a residential service facility for 10 residents and 2 staff members. A total of 4 people are allowed to sleep on the first floor, and up to 9 people are allowed to sleep on the second floor. No use of the tower room or the basement for living purposes is allowed.
8. **Parking.** Prior to obtainment of a Residential Occupancy Permit, the applicant shall enlarge the detached accessory building to have minimum interior dimensions of 18' x 18' clear. The applicant shall submit a Permit Adjustment Application to the Director of Planning for approval of the accessory structure enlargement. This building is to be used for covered parking for two (2) vehicles. Use of the accessory building as living space is prohibited.
9. **Driveway Parking.** This Conditional Use Permit recognizes the use of the driveway to account for two of the required five parking spaces.
10. **24-hour On-site Management.** 24-hour on-site staff management is required.
11. **Contact Person.** The applicant shall provide the Director of Planning in writing on an annual basis, the name of a designated contact/complaint person, an alternate and staff manager. The initial designated contact/complaint person shall be provided to the Director of Planning prior to recordation of the permit.

12. **Compliance Review.** A Compliance review is required in response to written complaints filed with the Director of Planning.
13. **Outdoor Activities.** Outdoor activities shall be limited to the hours of 8:00 a.m. to 8:00 p.m. Monday through Friday, and 10:00 a.m. to 8:00 p.m. Saturday, Sunday and holidays.
14. **Amplified Sound.** The permit does not permit nor include any approval for exterior/outdoor amplified sound.
15. **Loitering.** Loitering by non-residents on site is not permitted, nor is loitering by residents in the front setback. Parking areas shall be posted with “no loitering/trespassing” signs.
16. **Visiting Requirements.** Visitation hours shall be established and posted on-site and shall not extend beyond the hours of 7:00 a.m. to 10:00 p.m. Employee staff meetings, which include more than the normal staffing levels, shall not occur during established visiting hours. No persons other than residents or staff normally scheduled for the operations of the facility shall be allowed on-site between 10:00 p.m. and 7:00 a.m. except for emergencies. All such emergency situations shall be documented for review by City staff. Entry into the facility shall be controlled at all times.
17. **On-site Events.** On-site events shall be limited to resident functions only.
18. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping. Garbage and recycling containers must be stored in the designated area at the rear of the site except for 12 hours before and after scheduled pick-ups.
19. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
20. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP01-11-097, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
21. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
22. **Resident Violations.** Any resident found to violate sobriety from alcohol/controlled substances shall be subject to immediate eviction from the facility.
23. **Outdoor Storage.** No outdoor storage is permitted.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c: Owner
Applicant
Building Division (2)
Engineering Services
207-10/JED:jb